Yellow Freight System, Inc.[1] ***and*** **Jockey G. Terry**

Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO *and* Jockey G. Terry. Cases 16–CA–14723 and 16–CB–3664

June 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 7, 1991, Administrative Law Judge George Christensen issued the attached decision. The Respondent Union and Respondent Yellow Freight System, Inc. filed separate exceptions and supporting briefs, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions, to modify the remedy,[3] and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO, Dallas, Texas, its officers, agents, and representatives, and Yellow Freight System, Inc., Irving, Dallas, and Fort Worth, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph B, 1, c.

''(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached Appendix B for that of the administrative law judge.

[1] The caption reflects the correct name of this Respondent.

[2] Respondent Yellow Freight has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge's finding that Respondent Yellow Freight violated Sec. 8(a)(1) and (3) by conditioning casual employee Terry's continued employment on Terry's satisfying the Union's demands for his reacquisition of good standing membership, and by terminating Terry upon learning that he had been unable to accomplish that reacquisition of union membership. We recognize that the judge erred in his recitation of Shop Supervisor Hathaway's testimony regarding Maintenance Manager Stickney's June 15 statement in Hathaway's office and in the presence of Union Stewards Smith and Sessions. Hathaway testified that Stickney intervened in a discussion between him and the union stewards regarding Terry's nonpayment of dues, his suspension from union membership, and the stewards' request that work assignments be withheld from Terry until he took care of his dues delinquency. According to the judge, Stickney stated, ''Texas is a right-to-work state, open shop, and we could not use Mr. Terry *just because* he hadn't paid his dues.'' (Emphasis added by the judge.) The judge, however, omitted a second ''not'' from the statement, i.e., Hathaway actually testified that Stickney said they ''could not not use Mr. Terry.'' We note that Stickney's actual words are nonetheless fully consistent with the judge's later finding that the Respondent Yellow Freight's defense to the above allegations was a ''sham developed in accordance with Stickney's advice to Smith, to justify the Employer's compliance with Smith's demand for the termination of Terry's employment because of his failure to maintain good standing membership in the Union.'' We further note that the judge's finding the Respondent's defense to be a sham is fully supported by record evidence. In light of this determination, we deny the General Counsel's motion that the matter be submitted to the judge for clarification.

Respondent Yellow Freight argues that it ceased using casual employees in January 1991. We leave to compliance the proof of that allegation and the determination of its effect, if any, on employee Terry's backpay and reinstatement entitlement.

[3] Interest on backpay is to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT condition the employment of our employees on their maintenance of good standing membership in Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT threaten to terminate and terminate employees for failing to maintain good standing membership in Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Jockey G. Terry reinstatement to his former position or a substantially equivalent position if that position no longer exists, with all seniority and other rights and privileges restored.

WE WILL make Jockey G. Terry whole, jointly and severally, with Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO, for any losses in wages and benefits he suffered as a result of our unlawful termination of his services for failure to maintain good standing membership in Teamsters Local

745, a/w International Brotherhood of Teamsters, AFL–CIO.

WE WILL expunge from our records and files any reference to Terry's unlawful termination and notify him in writing this has been done and no evidence relating to his unlawful termination shall be used against him.

YELLOW FREIGHT SYSTEM, INC.

Ruth Small, for the General Counsel.
David L. Mandelbaum, of Overland Park, Kansas, and *John F. McCarthy, Jr.* and *M. Scott McDonald (Johnson, Bromberg & Leeds)*, of Dallas, Texas, for Yellow Freight System.
James L. Hicks Jr. (Hicks, James & Preston), of Dallas, Texas, for Teamsters Local 745.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On February 28, 1991, I conducted a hearing at Fort Worth, Texas, to try issues raised by a consolidated complaint issued on November 2, 1990,[1] based on a charge filed in Case 16–CA–14723 by Jockey G. Terry (Terry) on August 30 and a charge and amended charge filed by Terry in Case 16–CB–3664 on August 7 and 30.

The complaint alleged and Teamsters Local 745 (Union) denied in its answer thereto the Union violated Section 8(b)(1)(A) of the National Labor Relations Act (Act) by its shop steward telling Terry he probably would not be allowed to continue working for the Employer until he worked out an arrangement with the Union's secretary-treasurer to restore himself to good standing membership in the Union by paying his delinquent dues and by its secretary-treasurer telling Terry members of the Union employed by the Employer might assault and refuse to work with him unless he worked out an arrangement satisfactory to the secretary-treasurer for paying his delinquent dues and restoring himself to good standing membership in the Union.

The complaint also alleged and the Union denied the Union violated Section 8(b)(1)(A) and (2) of the Act by its shop steward demanding the Employer cease employing Terry because of his failure to work out an arrangement satisfactory to the Union for payment of his delinquent dues and restoration to good standing union membership.

The complaint further alleged and the Union denied its shop stewards Smith and Sessions were agents of the Union within the meaning of the Act.

The complaint alleged and Yellow Freight System (Employer) denied the Employer violated Section 8(a)(1) of the Act by its shop supervisor telling Terry he could not be scheduled to work unless and until he resolved his dues/membership dispute with the Union. The complaint further alleged and the Employer denied the Employer violated Section 8(a)(1) and (3) of the Act by failing and refusing to continue Terry in its employ because of Terry's failure to resolve that dispute.

[1] Read 1990 after further date references omitting the year.

The issues are whether the Union and the Employer committed the acts alleged in the complaint and, if so, whether they thereby violated the Act.

Counsel were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. All three counsel filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following

FINDINGS OF FACT[2]

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answers thereto filed by the Employer and the Union admitted, and I find at all relevant times the Employer was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

For many years the Employer operated a maintenance facility at Irving, Texas. The Union represented its employees there and their wages, hours, and working conditions were covered by a succession of collective-bargaining agreements, including an agreement for a term extending from April 1, 1988, through March 31, 1991.

At all pertinent times the Union designated T. T. Smith as its shop steward and Bernie Sessions as his assistant at the facility.[3]

The agreement authorized the stewards, on behalf of the Union, to: (1) investigate and process grievances on behalf of employees represented by the Union; (2) collect union dues when so authorized by the Union; and (3) act as a conduit in transmitting communications between the Union and the Employer. Uncontradicted testimony also established, and I find, Smith and Sessions, on the Union's behalf, negotiated with the Employer with respect to employee licensing requirements, employee substance abuse, and the transfer of employees from casual to regular employee status.

The 1988–1991 agreement provided for the employment, and limited agreement coverage, of two types of casual employees—replacement casuals to replace regular employees fully covered by the agreement off work due to illness, vacation, etc. and supplemental or extra casuals when increased workloads anticipated to be of short duration occurred.

At all relevant times Roger Stickney was the maintenance manager and Clifford Hathaway was one of five shop supervisors under him who worked rotating shifts in a three-shift

[2] While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore any testimony in the record which is inconsistent with my findings is discredited.

[3] The Union admitted in its answer, uncontradicted testimony (which I credit) establishes, and I find at all pertinent times Smith and Sessions were the Union's designated and authorized union shop stewards at the facility. The Union denied Smith and Sessions were authorized, however, to seek and secure Terry's discharge for not paying dues to the Union.

operation at the facility.[4] In 1986 Terry was employed for a time as a casual employee by the Employer. In the summer of 1987, he contacted Hathaway and sought steady employment. Hathaway asked if he was a member of the Union. He replied he was not, but needed work and was willing to join the Union; did so; so informed Hathaway; and thereafter was employed on a steady basis through the balance of 1987, all of 1988, all of 1989, and through June 15, 1990 (mostly as a replacement casual and on occasion as an extra casual).

Following Terry's acquisition of union membership in mid-or late 1987 (by paying an initiation fee to the Union at the union hall), Terry neither delivered an authorization to the Employer for the deduction of regular union dues nor paid any dues directly to the Union, so his union membership was suspended in late 1987.

Neither the two union stewards at the shop nor Hathaway were aware Terry did not pay any union dues and was suspended from union membership in 1987.

On or shortly before Friday each week, Hathaway prepared written schedules listing the names of regular employees whose absence during the subsequent workweek (Saturday through the following Friday) required the summoning of replacement casuals and the names of the replacement casuals replacing them.

Records produced by the Employer showed Terry did not work June 1–8; that he worked on June 9 and 10; that he did not work on June 11 and 12; and that he worked June 12–l7 and 19.

On June 15, Smith and Sessions contacted Hathaway at the facility and secured his permission to confer with Terry regarding his dues delinquency. They then contacted Terry, escorted him to the breakroom and informed Terry that Sessions had ''stumbled over'' his nonpayment of dues to the Union and consequent suspension, stating his continued employment was jeopardized thereby. Terry conceded he had not paid any union dues since acquiring union membership, stated he would appreciate working something out since he wanted to continue working and was willing to make restitution of his unpaid dues. He then went back to work and the stewards went to Hathaway's office.

On contacting Hathaway, Smith advised him of Terry's nonpayment of union dues, his suspension from union membership and asked Hathaway to withhold any work assignments from Terry until he took care of his dues delinquency. Stickney arrived at Hathaway's office while the matter was being discussed. Hathaway testified Stickney intervened in the discussion, stating: ''Texas is a right-to-work state, open shop, and we could not use Mr. Terry *just because* he hadn't paid his dues.'' (Emphasis added.)

Hathaway contacted Terry at his workplace, told Terry that Smith advised him Terry had failed to pay his union dues, Terry needed to take care of his dues problem by arranging to pay what he owed the Union and he would continue to assign work to Terry so long as he was getting his problem with the Union resolved. Terry replied he would try to resolve his problem.

On his next day off (June 20), Terry went to Smith's home to make a plea for Smith's help in resolving his dues problem with the Union. Smith was noncommittal, suggesting Terry talk to the Union's principal officer, Secretary-Treasurer T. C. Stone.

The following day (June 21), Terry went to the union hall and secured an audience with Stone.[5] Stone called him a scab, said he owed the Union $1137,[6] that he knew he owed the money and knew he should have paid it, and that he did not know if Terry would be able to continue working for the Employer since his fellow employees probably would not want to work with him and would want to kick his (expletive) if they learned he had been evading paying his dues. Terry replied he felt guilty about not paying his dues and asked if he could continue working for the Employer while he paid his delinquent dues to the Union in installments. Stone responded he didn't think that was satisfactory but he would discuss it with Smith and asked Terry to leave his office while he telephoned Smith. Terry complied with his request. When he was called back to Stone's office, Stone informed Terry that Smith stated he didn't care if Terry ever came back to work. Stone then told Terry he would have to pay at least half of the $1137 and after receiving that money he would determine if Terry could continue to work while paying off the balance.[7] Terry then left Stone's office.

The next day (Friday, June 22), Terry telephoned Hathaway. He told Hathaway it didn't look like he was going to be able to resolve his dues problem with the Union as soon as he thought and he felt threatened by the Union. Hathaway responded in that case he couldn't put Terry on the replacement casual work schedule until he resolved his dues problem and suggested he try to persuade Smith to exert more effort on his behalf to resolve his problem.[8]

The replacement work schedule for June 23–29 purports to show Terry was assigned to replace a regular employee (P. J. Sims) on June 23 and to replace a regular employee (B. Redding) on June 29. It did not show Terry as scheduled for any work on June 24.

Despite the absence of any entry in the June 23–29 replacement work schedule establishing Terry was scheduled to work as a replacement casual on June 24, Shop Supervisor D. Satterfield executed shop absentee reports stating Terry was scheduled to work on June 22, 23, and 24 but failed to report for work as a replacement casual on each of those dates and failed to call in with a reasonable excuse therefor.[9]

[4] The complaint alleged, the answer admitted, and I find at all pertinent times Stickney and Hathaway were supervisors and agents of the Employer acting on its behalf within the meaning of Sec. 2 of the Act.

[5] The complaint alleged, the answer admitted, and I find at all pertinent times Stone was the Union's secretary-treasurer and an agent of the Union acting on its behalf within the meaning of Sec. 2 of the Act.

[6] The amount of dues Terry had not paid between the time he acquired union membership and June 1990.

[7] These and earlier findings concerning conversations Terry had with Smith, Sessions, and Stone are based on Terry's uncontradicted testimony; Smith, Sessions, and Stone did not testify.

[8] Terry denied he was scheduled to work June 22, denied Hathaway told him he was scheduled to work as a replacement casual at any time during the week of June 23 through 29, and denied he told Hathaway he was going to look for another job. I credit those denials. Terry was convincing while Hathaway was not. Nor do I credit Hathaway's testimony and purported memorial concerning an alleged conversation with Terry on June 20.

[9] Under normal policy, each replacement casual was expected either to report for work on dates scheduled or telephone prior to the

In accordance with Hathaway's June 22 advice, Terry contacted Smith at his home a second time and asked Smith to help him resolve his dues problem; Smith replied there was nothing he could do, Stone was angry at Terry over his failure to pay his union dues and suggested Terry contact Stone personally.

Terry refrained from any renewed contact with Stone, but tested whether the Employer was going to continue denying him employment until he restored his good standing membership in the Union by telephoning Hathaway on June 26 and another shop supervisor, John Beard, on July 6, in both cases requesting work. Hathaway informed Terry he had no work for him on the former date[10] and Beard, apparently unaware of Terry's difficulties with the Union and with Hathaway, told Terry he had work as an extra casual available and to report for work.[11]

Terry reported for work on the July 6 day shift. Seeing Sessions, he stated he did not want any trouble, he had a family to support, he needed to work, and he hoped his working did not trouble Sessions. Sessions replied he was not troubled but he didn't know about Smith. Terry later encountered Smith and repeated the comments he made to Sessions. Smith responded Terry knew he did not have any business being there and that he was there at his own risk.

Smith then went to Hathaway's office and complained about Terry's presence in the facility. Hathaway subsequently approached Terry, told Terry since he had not resolved his dues problem with the Union, Smith was upset at his being there working and renewed his request that Hathaway not schedule any work for Terry; said he did not want any problems with the Union and he was sure Terry didn't either; repeated his earlier statement he was not going to schedule Terry for any work; and closed with the statement that while he knew this was illegal, the Employer could only protect Terry while he was at work and Terry knew he had a problem outside the shop.[12]

The same day, following a discussion of Terry's situation with Stickney, Stickney directed Hathaway to strike Terry's name from the casual list and Hathaway complied.

Since that strike, Terry has not been employed by the Employer.

scheduled date with an acceptable excuse for an inability to work the assigned date.

[10] While I credit Hathaway's testimony and a supporting entry he made on a ''shop absentee report'' that he told Terry he had no work to assign to him, I do not credit his testimony he told Terry he had no work for him because of his failure to report for work or call in with an acceptable excuse for work assigned to him on June 22, 23, and 24, nor do I accept the truthfulness of the balance of his entries on the report.

[11] While Hathaway admittedly did not schedule any work for Terry after the alleged June 24 and 29 assignments, Terry's name still appeared on the casual list utilized by the Employer when a need for a replacement casual or an extra casual arose.

[12] Terry testified Stone's representations of what could happen to him when his fellow union workers, who were militant unionists, learned he had been a ''free rider'' since 1987, were accurate.

B. *Analysis and Conclusions*

1. The alleged 8(b)(1)(A) violation by the Union's secretary-treasurer

The complaint alleged the Union violated Section 8(b)(1)(A) of the Act on June 21 by Secretary-Treasurer Stone's telling Terry that union members employed by the Employer might assault him and might refuse to work with him because of his failure to maintain good standing membership in the Union.

I have entered findings to the effect Stone indeed made such a prediction and that Terry confirmed its accuracy (testifying his fellow employees who were union members and supporters might very well assault him and refuse to work with him if they learned he had been a ''free rider''[13] over the 2-1/2 years he had been steadily employed as a replacement casual).

Stone's statement, however, neither contained a threat the Union by either Stone or any other agent would direct, authorize, cause, or ratify such conduct on the part of any of its members but rather was an admittedly accurate prophecy of what might occur when and if Terry's fellow employees learned he had failed to pay dues since achieving steady employment.

I therefore find and conclude the Union did not violate the Act by Stone's June 21 prediction.

2. The alleged 8(b)(1)(A) and (2) violations by Union Steward Smith

The complaint alleged the Union violated Section 8(b)(1)(A) and (2) of the Act by Union Steward Smith's telling Terry he probably would not be allowed to continue working for the Employer unless he reacquired good standing membership in the Union and by demanding the Employer cease employing Terry until and unless he satisfied the Union's requirement for reacquiring good standing union membership.

I have entered findings Smith made those statements.

Section 14(b) of the Act bars the application of agreements between an employer and a union requiring membership in that union as a condition of employment in any State in which such application is prohibited by state law. The currently effective collective-bargaining agreement between the Employer and the Union provides the union membership requirement of that agreement does not apply in any State where such a law is in effect. Texas has such a law. Smith's demand violated Section 8(b)(1)(A) and (2) of the Act[14] un-

[13] A receiver of wages and benefits set forth in the Employer-Union collective-bargaining agreement while failing to support the Union's achievement of those wage levels and benefits on his and the other employees' behalf by payment of dues to the Union to defray its costs and expenses in securing those wage levels and benefits.

[14] *Yellow Freight System*, 197 NLRB 979 (1972); *Montgomery Elevator Co.*, 278 NLRB 871 (1986); *Stage Employees IATSE Local 665 (Columbia Pictures)*, 268 NLRB 570 (1984); *Laborers Local 576 (Myr Sheet Metal)*, 267 NLRB 632 (1983), enfd. 754 F.2d 677 (6th Cir. 1985); *Pacific Plywood Co.*, 134 NLRB 736 (1961), enfd.

Continued

less, as the Union contends, the Union was not responsible for his actions.

The Union contends the authority of its stewards to act on its behalf are limited by the applicable collective-bargaining agreement between the Employer and the Union to the investigation and processing of grievances on behalf of employees covered by the agreement and represented by the Union, the collection of dues when authorized by the Union, and the transmission of authorized messages and information between the Union and the Employer; and further limited by the Union's bylaws to actions specifically directed by the Union's executive Board.

The Board rejected similar contentions in the past, interpreting Section 2(13) of the Act as providing ''A principal may be responsible for the acts of his agent within the scope of the agent's general authority or the 'scope of his employment' . . . even though the principal has not specifically authorized or indeed may have specifically forbidden the act in question. It is enough if the principal actually empowered the agent to represent him in the general area within which the agent acted'';[15] that ''The principal's consent, technically called authorization or ratification, may be manifested by conduct, sometimes even passive acquiescence as well as by words. Authority to act as agent in a given manner will be implied whenever the conduct of the principal is such as to show that he actually intended to confer that authority,''[16] i.e., that ''authority may be implied or apparent, as well as express.''[17]

Applying those principles, the Board has held unions responsible for the following actions of their stewards: (1) a threat to cause, attempt to cause and causing an employee's discharge because he was delinquent in his payment of union dues (*Seago Construction Co.*, 141 NLRB 872 (1963)); (2) a threat to cause an employee's discharge because he was not a member of the union (*Laborers Local 41 (Anderson Construction)*, 129 NLRB 1447 (1961), enfd. 295 F.2d 657 (7th Cir. 1961)); (3) an attempt to cause and causing an employer to deny employment to a job applicant because he refused to execute an authorization for the checkoff of dues to the union (*Bellkey Maintenance Co.*, 270 NLRB 1049 (1984)); (4) a threat to cause employees to be discharged for failing to support incumbent union officers (*Teamsters Local 886 (Lee Way Motor)*, 229 NLRB 832 (1977), and *Boilermakers Local 5 (Regor Construction)*, 249 NLRB 840 (1980)); (5) threat to cause employees loss of future job referrals if they fail or refuse to cease work to make room for the employment of union members (*Electrical Workers IBEW Local 175 (Duncan Electric)*, 269 NLRB 691 (1984)); (6) threats to fine employees for testifying on behalf of an employer at an arbitration (*Electrical Workers IUE Local 745 (McGraw Edison)*, 268 NLRB 308 (1983), enfd. 759 F.2d 533 (6th Cir. 1985)); and (7) causing employees to cease work because their employer contracted work to a nonunion subcontractor (*Carpenters Local 2067 (AGC)*, 166 NLRB 532 (1967)).

In each of these cases the Board, reasoning the steward was acting within the scope of his general or apparent authority, held the union was responsible for the described action, in many cases despite language in the applicable collective-bargaining agreement, union constitution or bylaws limiting or denying the stewards' authority to take the actions in question on behalf of the union.

On the basis of the record evidence in this case, I find and conclude the Union is responsible for Smith's implied threat the Union would cause the Employer to withhold further work assignments from Terry unless he paid his delinquent dues and reacquired good standing union membership, Smith's demand the Employer withhold those assignments, and Smith's accomplishment of that goal.

At all times pertinent Terry recognized and accepted Smith's authority, on behalf of the Union, to interview him during working hours to demand he cure his dues delinquency and reacquire good standing union membership with the accompanying implied threat the Union would cause the Employer to cease scheduling work for him unless he did so; Hathaway recognized and accepted Smith's authority, on behalf of the Union, to demand Terry not be scheduled any work unless he cured his dues delinquency and reacquired good standing union membership by counselling Terry to seek Smith's assistance in reacquiring good standing union membership and conditioning his continued employment on his doing so; Stickney recognized and accepted Smith's authority, on behalf of the Union, to demand work assignments be withheld from Terry until and unless he reacquired good standing union membership by commenting the Employer had to create or develop some other reason as justification for the Employer's compliance with Smith's request; and Stone recognized and accepted Smith's authority, on behalf of the Union, to affect Terry's continued employment by telling Terry he had to consult with Smith and secure his advice before rejecting Terry's plea for reacquisition of good standing union membership by payment of his delinquent dues in installments out of future wages. The Employer-Union agreement further authorizes the stewards to transmit union communications to the Employer.

These facts amply support my finding and conclusion the Charging Party, the Employer, and the Union recognized and accepted Smith's authority, on behalf of the Union, to affect Terry's union membership and his continued employment.

I therefore find and conclude by Smith's implied threat the Union would cause the termination of Terry's employment if he failed to cure his dues delinquency and reacquire good standing union membership, by Smith's attempt to cause the Employer to terminate Terry's employment for his failure to cure the dues delinquency and reacquire good standing union membership, and by Smith's success in securing Terry's termination for such failure, the Union violated Section 8(b)(1)(A) and (2) of the Act.

3. The alleged 8(a)(1) and (3) violations by the Employer

The complaint alleged the Employer violated Section 8(a)(1) of the Act by Hathaway's conditioning Terry's continued employment on compliance with the Union's demands for reacquiring good standing union membership and termi-

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315 F.2d 671 (9th Cir. 1963). Also see *Carpenters Local 546 (Duffee Forms)*, 300 NLRB 437 (1990); *Painters Local 513 (National Glass)*, 299 NLRB 35 (1990); *Laborers Local 332 (D'Angelo Bros.)*, 295 NLRB 1036 (1989); *Electrical Workers IBEW Local 175 (Duncan Electric)*, 269 NLRB 691 (1984).

[15] *Longshoremen Local 6 (Sunset Line)*, 79 NLRB 1487, 1507 (1948).

[16] *Teamsters Local 886 (Lee Way Motor)*, 229 NLRB 832 (1977).

[17] *NLRB v. Electrical Workers IBEW Local 3*, 467 F.2d 1158 (1972).

nating his employment on being informed Terry had been unable to accomplish that reacquisition.

I have entered findings both those allegations are supported by the evidence, as well as findings the Employer's defense Terry was terminated because of his alleged failure to either report for work when scheduled or to call to explain his nonreporting was a sham developed, in accordance with Stickney's advice to Smith, to justify the Employer's compliance with Smith's demand for the termination of Terry's employment because of his failure to maintain good standing membership in the Union.

In the absence of a lawful collective-bargaining agreement conditioning continued employment on the maintenance of good standing union membership, both the Employer's conditioning of Terry's continued employment on his satisfying the Union's demands for Terry's reacquisition of good standing membership and terminating Terry for failure to reacquire that standing encouraged union membership in violation of Section 8(a)(1) and (3) of the Act.[18]

I therefore find and conclude by conditioning Terry's continued employment on his reacquisition of good standing membership in the Union and by terminating Terry's employment for his failure to reacquire that good standing, the Employer violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times the Employer was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times Stone, Smith, and Sessions were agents of the Union acting on its behalf within the meaning of Section 2 of the Act.

3. At all pertinent times Stickney and Hathaway were agents of the Employer acting on its behalf within the meaning of Section 2 of the Act.

4. The Union violated Section 8(b)(1)(A) and (2) of the Act by threatening to cause, attempting to cause, and causing the Employer to terminate Terry's employment because of his failure to maintain good standing membership in the Union.

5. The Employer violated Section 8(a)(1) and (3) of the Act by conditioning Terry's continued employment on maintenance of good standing membership in the Union and by terminating Terry's employment because of his failure to do so.

6. The aforesaid unfair labor practices affected and affect commerce as defined in the Act.

THE REMEDY

Having found the Union and the Employer engaged in unfair labor practices, I recommend they be directed to cease and desist therefrom and take affirmative action designed to effectuate the purposes of the Act.

Having found the Union unlawfully caused the Employer to terminate Terry's employment and the Employer at the Union's behest unlawfully terminated Terry's employment, I recommend the Employer be ordered to reinstate Terry to his former or a substantially equivalent position if it no longer exists and the Union and the Employer jointly and/or severally make Terry whole for any loss of earnings and benefits he suffered as a result of his unlawful termination, less interim earnings, with the sums due and interest thereon calculated in the manner set out in *F. W. Woolworth Co.*, 90 NLRB 289 (1950); *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962). I also recommend the Employer be ordered to expunge from its records and files any reference to Terry's termination, Terry be notified in writing this has been done and evidence relating to his unlawful termination shall not be used against him. I further recommend the Union be ordered to advise both Terry and the Employer the Union has no objection to Terry's reinstatement and continued employment by the Employer.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

A. Respondent Teamsters Local 745, a/w International Brotherhood of Teamsters, AFL–CIO, Dallas, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with termination of their employment for failing to maintain good standing membership in Local 745.

(b) Attempting to cause and causing employers to terminate employees for failure to maintain good standing membership in Local 745.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Jockey G. Terry whole jointly and severally with Yellow Freight System for any loss in pay and benefits he may have suffered as the result of Local 745's unlawful actions against him in the manner set out in the remedy section of this decision.

(b) Inform Jockey G. Terry and Yellow Freight System in writing Local 745 has no objection to the employment of Jockey G. Terry in his former or a substantially equivalent position.

(c) Post at its business offices, meeting hall, and on any union bulletin boards at Yellow Freight System facilities in the Irving, Dallas, and Fort Worth areas in places where notices to its members are customarily posted, the attached notice marked ''Appendix A,''[20] in all places where notices to members of Local 745 are customarily posted. Copies of the notice, on forms provided by the Regional Director for Region 16, shall be signed by an authorized representative of Local 745, posted immediately upon their receipt and main-

[18] *Yellow Freight System*, supra; *Bellkey Maintenance Co.*, supra; *Montgomery Elevator Co.*, supra; *Pacific Plywood Co.*, supra.

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

tained for 60 consecutive days. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent Yellow Freight System, Inc., Irving, Dallas, and Fort Worth, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Conditioning the employment of its employees on their maintenance of good standing membership in Teamsters Local 745.

(b) Threatening to terminate and terminating its employees for failure to maintain good standing membership in Teamsters Local 745.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Jockey G. Terry reinstatement to his former position or a substantially equivalent position if that position no longer exists, without prejudice to his seniority or other rights and privileges.

(b) Expunge from all records and files any reference to the unlawful termination of Terry's employment and notify Terry in writing this has been done and evidence relating to his unlawful termination shall not be used against him.

(c) Make Jockey G. Terry whole jointly and severally with Local 745 for any losses in wages and benefits he may have suffered as a result of Yellow Freight System's unlawful actions in the manner set out in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records, reports and all other records necessary to determine the payments which will make whole Jockey G. Terry for the discrimination practiced against him.

(e) Post at its facilities in the Irving, Dallas, and Fort Worth, Texas areas where Jockey G. Terry and employees represented by Local 745 were and are employed, and all other locations where notices to its employees are customarily posted, copies of the attached notice marked ''Appendix B.''[21] Copies of the notice, on forms provided by the Regional Director for Region 16, shall be signed by an authorized representative of Yellow Freight System, posted immediately upon their receipt and maintained for 60 consecutive days. Reasonable steps shall be taken to ensure the notices are not altered, defaced, or covered by other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[21] See fn. 20.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board found we violated the National Labor Relations Act and ordered us to post and comply with the terms of this notice.

WE WILL NOT threaten employees with termination of their employment for failing to maintain good standing membership in Local 745.

WE WILL NOT attempt to cause or cause employers to terminate employees for failure to maintain good standing membership in Local 745.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL make Jockey G. Terry whole jointly and severally with Yellow Freight System for any loss in pay and benefits he suffered as a result of our unlawful attempt to cause and causing Yellow Freight System to terminate his employment because of his failure to maintain good standing membership in Local 745.

WE WILL inform Terry and Yellow Freight System in writing we have no objection to Yellow Freight's employment of Terry in his former or a substantially equivalent position.

TEAMSTERS LOCAL 745, A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO